IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : September14, 2006

State of Punjab

....Appellant

versus

Darshan Lal

....Respondent

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. K.S.Boparai, Additional Advocate General, Punjab

Virender Singh, J.

State of Punjab has preferred the instant appeal against impugned judgment of learned Special Judge, Ferozepur dated 1.3.2006 vide which HC Darshan Lal respondent herein has earned acquittal for the charge of section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act'). Miscellaneous application under section 378(3) of Cr.P.C. has also been filed for grant of leave.

The complainant Dial Singh and Bashir Singh (shadow witness) both residents of village Fatehgarh Tehsil Fazilka made a complaint before DSP Surjit Singh of Vigilance Bureau, Moga alleging

therein that he (Dial Singh) was running a Karyana shop and before that he was indulging in 'Darra Satta'. In the month of February 2004, a criminal case was registered against him and thereafter he had left that business (Darra Satta). The respondent who was posted as Head Constable compelled him to restart the same business subject to payment of Rs 2000/- per month to him and on his motivation he started that business. It is alleged that on 16.6.2004 he paid Rs 700/- to the respondent but the latter started making demand of balance amount. The complainant promised to make payment of Rs 1000/- on 17.6.2004 and as such he was assured by the respondent to continue with the said business. It is then alleged that the respondent had threatened him that if the complainant would not continue with the said business, a false case would be registered against him. On the basis of the aforesaid allegations, statement of Dial Singh was recorded by DSP Surjit Singh before whom complainant had presented ten currency notes of Rs 1000/- of the denomination of Rs 100/- each. Certain formalities were completed by DSP and after applying phenolophthalein powder (PP powder) on the currency notes, he handed over the aforesaid money to complainant Dial Singh. Shadow witness was also instructed about the raid. He was also instructed with regard to giving signal to the police party. On the basis of the complaint, a ruqa was sent to the concerned Police Station, Vigilance Bureau, Ferozepur, upon which formal FIR was recorded. Thereafter, the raiding party proceeded towards police post Ladduka and on the instructions of DSP, the complainant and the shadow witness went to the Police Post. After the amount was handed

over to the respondent, shadow witness gave the required signal to the police party upon which the Investigating Officer, DSP along with other police official entered Police Post, Ladduka. The currency notes which were handed over to the respondent by the complainant were recovered by DSP. The same were kept in the right side pocket of his paint. All other formalities were also completed at the spot including dipping of the hands of the respondent in a glass of water where sodium corbonate was mixed. Recovery memos were also prepared at the spot for seizing of all the articles. After completion of the investigation, the respondent was challaned in this case. As stated above, he was charged under section 7 of the Act.

The respondent has pleaded his false implication in this case denying all the allegations. In his defence he has examined Constable Mukhtiar Singh as DW1 and HC Jaipal as DW2.

The learned trial court has acquitted the respondent primarily on the ground that the complainant and the shadow witness have not supported the case of the prosecution. The complainant has categorically stated that he did not give any money to respondent Darshan Lal. He rather stated that he had got registered a case against ASI Raj Singh and HC Tilk Raj. Bashir Singh shadow witness has also denied the version of the prosecution.

The view taken by the learned trial court is that in the absence of any proof of demand and acceptance of the bribe, respondent could not be held guilty. In order to strengthen his view, the learned trial court has

relied upon a latest judgment of Apex Court rendered in **Union of India Thr. Inspector, CBI vs Purnandu Biswas** 2005(4) RCR (Criminal) 517, in which their Lordships have held that simply some currency notes were handed over to public servant, it does not make it as acceptance of gratification and the prosecution has to discharge its duty to prove that what was paid to accused amount to gratification. The learned trial judge has also relied upon other two judgments of this Court rendered in **Sarwan Singh vs. State of Punjab 2004(1) RCR (Criminal) 368 and Sat Pal (died) through L.Rs. Vs State of Punjab 2004(1) RCR (Criminal) 830.**

We have heard Mr. K.S.Boparai and with his assistance have gone through the records.

Mr. Boparai contends that may be the complainant and the shadow witness have not supported the case of the prosecution still the respondent can be convicted on the basis of the recovery alone which is effected in the presence of a senior police official and there is no reason to disbelieve his statement. He then submits that it has also come on record that all the legal formalities were completed at the spot and therefore, once the recovery of the bribe amount is proved from the respondent, the onus shifts upon him to explain as to how he came into possession of the said amount. The learned State counsel submits that under section 20 of the Act, presumption has to be drawn against the accused.

We do not agree with the submissions advanced by the learned State counsel. In **Purnandu Biswas**'s case (supra), the same contention was raised on behalf of the State with regard to the presumption

as contained in section 20 of the Act. Their Lordships while dealing with that aspect did not agree with the argument advanced by State counsel. In the aforesaid judgment, another judgment rendered by the Apex Court in **M.Narsinga Rao v. Andhra Pradesh, 2001(1) RCR (Criminal) 95, SC** was also relied upon.

Once the two star witnesses of the prosecution viz the complainant and the shadow witness have not supported the case of the prosecution, in our view, the evidence of the remaining witnesses cannot be considered enough for the purpose of conviction.

As a sequel to the aforesaid discussion, we do not deem it a fit case for grant of leave to appeal against the acquittal earned by respondent Darshan Lal vide impugned judgment. Consequently, the miscellaneous application being Criminal Misc. No. 327-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

September 14, 2006
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